

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

COREY RICHARDSON,

Petitioner,

v.

**CIVIL ACTION NO. 2:07 CV 78
CRIMINAL ACTION NO. 2:05 CR 8
(Maxwell)**

UNITED STATES OF AMERICA,

Respondent.

ORDER

On October 4, 2007, *pro se* Petitioner Corey Richardson filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody.

The case was referred to United States Magistrate Judge John S. Kaull for preliminary review and report and recommendation in accordance with Rules 83.01, et seq., of the Local Rules of Prisoner Litigation Procedure and Standing Order No. 4.

After conducting an initial screening and review, United States Magistrate Judge John S. Kaull issued an Opinion/Report And Recommendation on June 16, 2008, wherein he recommended that the Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody be denied and dismissed from the Court's active docket because the Petitioner knowingly, intelligently, and voluntarily waived the right to collaterally attack the conviction.

In his Opinion/Report And Recommendation, Magistrate Judge Kaull provided the parties with ten (10) days from the date they were served with a copy of said Opinion/Report And Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to

appeal from a judgment of this Court based upon said Opinion/Report And Recommendation.

The Court's review of the docket in the above-styled *habeas corpus* action reveals that Corey Richardson's Objection To The Magistrate Judge's Report And Recommendation was filed on June 30, 2008.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the Magistrate Judge's findings to which objection is made. The Court is not, however, required to review, under a *de novo* or any other standard, the factual or legal conclusions of the Magistrate Judge as to those portions of the findings or recommendation to which no objections are made. Thomas v. Arn, 474 U.S. 140, 150 (1985). The Court has conducted a *de novo* review only as to the portions of the Opinion/Report and Recommendation to which the Petitioner objected. The remaining portions of the Opinion/Report And Recommendation to which the Petitioner has not objected have been reviewed for clear error.

Based upon its review, the Court is of the opinion that Magistrate Judge Kaull's Opinion/Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled action. Further, upon consideration of the Petitioner's Objection To The Magistrate Judge's Report And Recommendation, it appears to the Court that the Petitioner has not raised any issues that were not thoroughly considered by Magistrate Judge Kaull in his Opinion/Report And Recommendation. Accordingly, it is

ORDERED that the Opinion/Report And Recommendation entered by United States Magistrate Judge Kaull in the above-styled *habeas corpus* action on June 16,

2008 (Docket No. 373), be, and the same is hereby, **ACCEPTED** in totality, and that the Petitioner's Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence by a Person in Federal Custody (Docket No. 346) be, and the same is hereby, **DENIED** and **DISMISSED** from the Court's active docket because the Petitioner knowingly, intelligently, and voluntarily waived the right to collaterally attack the conviction. It is further

ORDERED that the above-styled *habeas corpus* action be, and the same is hereby, **DISMISSED** with prejudice and **STRICKEN** from the docket of the Court.

It is further

ORDERED that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of Court is directed to transmit copies of this Order to the *pro se* Petitioner and to counsel of record herein.

ENTER: October 15, 2009

/S/ Robert E. Maxwell
United States District Judge